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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re N.O et al., Persons Coming Under the
Juvenile Court Law.

STANISLAUS COUNTY COMMUNITY
SERVICES AGENCY,

Plaintiff and Respondent,

v.

TODD O.,

Defendant and Appellant.

F078391

(Super. Ct. Nos. 517860, 517861)

OPINION

THE COURT*

APPEAL from orders of the Superior Court of Stanislaus County. Ann Q.
Ameral, Judge.

Michelle Jarvis, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Detjen, J. and Snauffer, J.

Todd O. (father) appealed from the juvenile court's October 22, 2018 orders terminating his parental rights to his now six-year-old daughter, N.O., and five-year-old son, Jacob H. (Welf. & Inst. Code, § 366.26.)¹ After reviewing the juvenile court record, father's court-appointed counsel informed this court she could find no arguable issues to raise on father's behalf. This court granted father leave to personally file a letter setting forth a good cause showing that an arguable issue of reversible error exists. (*In re Phoenix H.* (2009) 47 Cal.4th 835, 844 (*Phoenix H.*.)

Father submitted a letter faulting the juvenile court for denying him reunification services² and terminating his parental rights. He contends he was in compliance with everything required of him when those orders were issued. He claims to have learned from his mistakes and wants his children back.

We conclude father failed to set forth a good cause showing that any arguable issue of reversible error arose from the termination hearing. (*Phoenix H.*, *supra*, 47 Cal.4th at p. 844.) Consequently, we dismiss the appeal.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in February 2017 after father's neighbor contacted the Stanislaus County Community Services Agency (agency) because then three-year-old Jacob had a welt on his face and two welts on the side of his body. Father was working in Nevada from Sunday through Thursday and left the children, Jacob, N.O., then four, and Trinity, their 11-year-old half sister, with his neighbor and her adult son. Jacob told the neighbor father hit him.

¹ Statutory references are to the Welfare and Institutions Code, unless otherwise noted.

² Father appealed the juvenile court's order denying him reunification services and we affirmed. (*In re Trinity O. et al.* (May 17, 2018, F076247) [nonpub. opn.].) We take judicial notice of our opinion. (Evid. Code, § 452, subd. (d); Cal. Rules of Court, rule 8.1115(b)(1).)

The neighbor told Stevee Lopez, the emergency response social worker, Jacob had a handprint on his left cheek when father dropped him off at her home. When she asked Jacob about it, he said, “daddy punched me.” The following evening, her son bathed Jacob and noticed marks and bruising on his chest and hip area. When Jacob was asked about these bruises, he stated, “daddy mad, daddy hit me.” The neighbor did not contact authorities immediately because she was afraid father would kill her and her family based on prior death threats.

Jacob showed Lopez his injuries and said father hit him with a wooden spoon. He said, “daddy punches me and kicks me when mad” and then demonstrated with his fist how father punched him in the cheek. He showed her his knee, stating “see daddy kicked me and I bled.” He also said, “daddy says dead, me dead.”

N.O. told Lopez, “daddy punched Jacob in the face” and “hits me too.” “Daddy says we’re dead, going to be dead, when he’s mad.” She said father was always angry and hits Jacob and Trinity. She did not feel safe with father and repeated multiple times “daddy says dead, we’re dead.”

Trinity saw father hit Jacob with a wooden spoon the night before he left for Nevada and said it was not the first time father hit them. He punched N.O. in the eye sometime between Thanksgiving and Christmas of 2016, resulting in a black eye. Trinity attempted to tell a school counselor about the abuse but was too afraid. In late December 2016, father hit and choked Trinity because she put on face wash and it made him mad. He also slapped her on the face. He threatened to kill the children, stating “I will kill you, all of you, if you ever tell anyone what’s going on. I wish you all were never born. I should just kill you all. I could just kill you and not have to deal with you anymore.” His most recent threat was a week or two before and Trinity believed he would carry them out.

Trinity told Lopez father choked her when she was four years old and leaned her over a filled bathtub and told her he was going to drown her. She was placed in foster

care in Nevada and returned to father's custody. She said he was always abusive to her and her siblings but she was too afraid to say anything. She did not have contact with her biological mother, Tiffany, because when she was two, Tiffany's boyfriend molested her. Trinity was visibly shaking and emotional while speaking of father and became nauseated and threw up at the thought of returning to him.

Lopez took the children into protective custody. While driving with them in the county car, the children disclosed that father sped and drove erratically when he was angry and tried to scare them. When presented with a meal for dinner, they asked if they had to eat outside, explaining father made them eat outside even in the rain because he said they ate like dogs and should have to be outside like dogs.

According to the Washoe County Department of Social Services (WCDSS), father and the mothers of his children had an extensive child welfare history in Nevada. In April 2007, his daughter, T.M., was born with a positive toxicology for methamphetamine and removed from her mother, Michelle M. T.M. was placed with father in June 2008 but removed two months later. The WCDSS prepared case plans for father and Michelle but they did not comply. In October 2010, father voluntarily relinquished his parental rights rather than proceed to a termination hearing.

WCDSS documents also reflect that from 2008 to 2012, it conducted numerous investigations and substantiated allegations of neglect as well as physical abuse and threat-of-harm allegations as to father. The children were removed but father regained custody of them and relocated to California in 2015.

Lopez questioned father about Jacob's injuries. Father denied leaving any marks on Jacob but thought he saw scratches on Jacob's face close to his chin, which he attributed to N.O. or Jacob jumping on a blow-up mattress. He explained N.O.'s black eye was possibly the result of horseplay or his elbow accidentally hitting her. Father said he loved his children and they had been "through hell and back in CPS in Nevada." He said he disciplined the children by spanking them on the butt with his hand but denied

leaving marks. He also denied threatening them but acknowledged making comments such as “don’t be stupid” or “don’t be dumb.” He admitted occasional marijuana use but denied any other drug use.

The following day, during an interview by a police officer, father admitted slapping Jacob once in the face because Jacob urinated in the bed and it woke him up. He was tearful and appeared remorseful. He thought he hit Jacob in the shoulder until he saw a picture of his facial bruising and realized he hit him in the face. He also disclosed that Jacob broke his femur while they were living in Nevada but that it had been investigated. The officer advised Lopez to take the children to the doctor for X-rays.

The agency filed an original dependency petition alleging the children came within the juvenile court’s jurisdiction under section 300, subdivisions (b)(1) (failure to protect), (c) (serious emotional damage) and (g) (no provision for support).

Father appeared at the initial hearing and the juvenile court deemed him the children’s presumed father. The court ordered the children detained and ordered the agency to have them assessed immediately for counseling. Following the hearing, a social worker gave father referrals for substance abuse treatment, individual and family counseling, anger management and parenting instruction. A week later, a mental health clinician diagnosed the children with posttraumatic stress disorder (PTSD) and referred them for ongoing counseling services.

The juvenile court scheduled a jurisdictional/dispositional hearing, which it conducted as a contested hearing in July 2017. Meanwhile, the agency amended the petition in April by adding counts under subdivision (j) (abuse of sibling) based in part on father’s inability to reunify with T.M. and his failure to protect the children from their mothers. The agency filed a second amended petition in May, adding counts under section 300, subdivision (a) (serious physical harm), alleging father injured Jacob nonaccidentally in February 2017, resulting in three separate areas of bruising or marking on his body: a round/oval, pinkish red mark measuring approximately two inches on his

left cheek; a linear bruise approximately three to four inches in length on his left torso and a bruise approximately an inch in length on his lower left hip. The agency also alleged under section 300, subdivision (i) (cruelty) that father hit, punched and kicked the children, threatened to kill them, choked Trinity when she was four years old, leaned her over a bathtub filled with water and told her he was going to drown her, punched N.O., resulting in a black eye, and forced the children to eat outside.

Tiffany contacted the agency and asked to participate in the proceedings. She was living in Texas and had a year of sobriety. She believed she was capable of resuming custody of Trinity. In June 2017, she appeared telephonically before the juvenile court and was appointed counsel.

Also in June 2017, social worker Andrea Collier visited the children in foster care. The foster mother said the children were doing much better. Trinity was seeing her counselor once a week and did not want to return to father's custody. She wanted to live with her maternal uncle or remain in her foster care placement.

In a series of reports filed for the contested hearing, the agency updated the juvenile court on father's progress in the initial voluntary services. Father entered Nirvana Drug & Alcohol Treatment Institute (Nirvana) for outpatient substance abuse treatment in March 2017 and transitioned into outpatient services with onsite housing where he remained. He was employed locally, had a sponsor and was working the 12-step program. He completed an anger management assessment with clinician Maryann Cose who also counseled him in parenting and individual counseling. By June, he had completed eight of 10 required parenting classes. Cose observed father to be anxious and easily agitated when discussing his past child welfare history. She shared the agency's concern about his poor judgment and physical abuse of the children. She was also concerned that he denied abusing the children and blamed others for their injuries. She recommended he complete anger management and parenting programs and participate in individual and family counseling.

The agency also expressed its reticence about recommending reunification services for father. He received substance abuse counseling and mental health treatment in Nevada. He also completed two anger management programs but was prone to extreme agitation and unpredictable anger in the children's presence. The agency could not identify any services for father that he had not already received.

The agency believed father physically and emotionally traumatized the children as evidenced by their PTSD diagnoses and reports by their foster parents that they experienced night terrors. They also had behavioral and emotional problems and physically fought and argued excessively. Consequently, they were placed in three different foster homes in the first two months of their removal. The agency also believed that father remained under stress and would continue to abuse the children. Further, though visits seemed to go well, father had difficulty regulating his emotions and became easily irritated with them.

The agency recommended the juvenile court sustain the second amended petition and order reunification services for Tiffany but deny services for N.O. and Jacob's mother because her whereabouts were unknown. (§ 361.5, subd. (b)(1).) The agency also recommended the court deny father reunification services under section 361.5, subdivision (b)(6) and (11). As evidence of severe physical abuse to support a finding under subdivision (b)(6), the agency pointed to father's admission he slapped Jacob in the face and the oval/circular shape of his facial bruise was consistent with being hit with a wooden spoon. In addition, the agency stated the linear bruises on Jacob's body were consistent with the handle of a wooden spoon. The agency also opined services would not benefit the children given father's propensity for violence and the children's statements he physically abused them and threatened to kill them. As evidence to support a finding under subdivision (b)(11), the agency cited the termination of father's parental rights as to T.M. and his failure to treat the problems that led to her removal.

At the contested hearing in July 2017, father testified he slapped Jacob twice the morning he urinated on the bed. The first time was accidental when father was slapping the mattress. The second time he slapped him in the face deliberately. He was angry because Jacob lied to him. He denied hitting Jacob intentionally any other time but said he may have “play slapped” him on the face or spanked him lightly on the butt, not intending to hurt him or make him cry. He never left marks on him but conceded it was not appropriate to slap a three-year-old child even playfully. Father denied hitting Jacob with a wooden spoon and said the marks on his hip and back were not there when he dropped him off with the neighbor. He also denied choking Trinity or giving N.O. a black eye but admitted playfully slapping them. Asked by the court to explain “playful slapping,” father said it was “roughhousing” but the children never sustained bruising as a result of it. He denied threatening to kill the children, forcing them to eat outside or threatening his neighbor.

Father conceded his behavior toward Jacob was aggressive and acknowledged that anger management was an issue during the children’s dependency action in 2012. Since completing anger management in that case, he had not exhibited any other aggressive acts, other than the one incident with Jacob. He did not believe he presently had a problem with anger control.

Tiffany testified she spent approximately a week and a half with father and the children in the winter of 2017. She saw him spank Jacob “pretty hard” on the butt because Jacob spilled juice on the floor in the kitchen but did not see any marks on Jacob as a result. She also saw father pick N.O. up by the arm, lift her off the ground and spank her very hard. N.O. and Jacob cried after father spanked them. She heard father call the children “stupid” and tell them he wondered why he even brought them back with him, that he could not handle them anymore and they were too much for him.

Valerie Castro testified she took over as the case managing social worker in mid-March 2017. To her knowledge the children had not been examined by a physician to

assess their bruises. Nevertheless, she believed theirs was a case of serious physical abuse based on the photographs of Jacob's bruises, father's use of a wooden spoon to discipline Jacob, reports of physical abuse and the siblings' statements. She said the children never stated anyone other than father hit them.

The juvenile court sustained the second amended petition without modification and adopted the agency's recommendations with respect to reunification services. In applying section 361.5, subdivision (b)(6) to father, the court found his physical mistreatment of Jacob and death threats to the children were emotionally damaging and cruel. It also found providing father reunification services would not be in the children's best interest given father's lack of remorse and denial about the extent and severity of the abuse they suffered. The court ordered monthly two-hour "closely" supervised visits between father and the children and set a six-month review hearing for January 2018.

Father appealed from the juvenile court's dispositional order, arguing there was insufficient evidence to support denying him reunification services under section 361.5, subdivision (b)(6) and (11). We affirmed the court's order.

In September 2017, father filed a modification petition (§ 388) requesting an order for reunification services. Father alleged that he graduated from Nirvana and resided in a sober living house. He was enrolled in anger management classes and in one-on-one parenting classes at Sierra Vista. He was also participating in single parenting classes at Nirvana and worked 56 hours a week. He had maintained his sobriety and was on step eight of the 12 steps. He believed the requested order served the children's best interests because he was the only parent they knew or lived with for any length of time. Their best chance of growing up together was with him.

The juvenile court summarily denied father's modification petition, stating that the request was not in the children's best interest. The court noted that reunification services were denied two months prior because the children suffered serious physical harm,

serious emotional damage and acts of cruelty caused by father. The court found no evidence father was reformed or even in the process of reforming.

In January 2018, on the date set for the six-month review hearing, the agency informed the juvenile court that N.O. and Jacob's foster parents wanted to adopt them and asked the court to set a section 366.26 hearing. The court set the hearing for March 2018 and continued it for a contested hearing the following July.

In June 2018, father filed a modification petition asking for reunification services and unsupervised visits. He alleged he successfully completed parenting classes, individual counseling, anger management and Nirvana's five-month outpatient program. He was also employed full-time. As to why his request served the children's best interest, he stated he loved them very much and had fought for them since the beginning of the case. He was able to provide for them financially and completed services designed to resolve the parenting issues that required their removal. He quoted his anger management counselor as stating he "took full accountability for past parenting mistakes, and seemed determined to make better choices based on the new knowledge that he accumulated." He also believed the court should consider the children's bond with Trinity and the fact that the plan for her was to return to her mother while the plan for the children was adoption.

Father attached an evaluation from his therapist/group facilitator, rating him as satisfactory or superior in all categories of progress. He was rated superior in demonstrating his understanding of the dynamics of angry and hostile behavior, empathy for the victims, his own personal insight, participation in group discussions and motivation to participate and complete the program. The facilitator reported father "demonstrated in-group that the use of threats, intimidation, or angry/violent behaviors is unacceptable. [Father] has demonstrated [in group] accountability for his actions. [He] learned and practiced [in group] new communication styles and positive conflict resolution skills. Moreover, [father] has demonstrated [in group] and through homework

the ability to empathize with others. [He] learned his own cues and triggers to anger as a sign to take time to think and use positive [self-talk]. Lastly, [father] has voluntarily participated [in group] discussions.” Father also attached certificates reflecting he completed five hours of anger management counseling and Nirvana’s outpatient treatment program.

In its report for the section 366.26 hearing, the agency recommended the juvenile court terminate parental rights and free the children for adoption. The children were well bonded to their foster parents who were certain to adopt them if given the chance. The children had been with their foster parents since September 2017 and called them “ ‘mom’ ” and “ ‘dad.’ ” They were separated from Trinity after she began a trial visit with her mother. They maintained contact with father through monthly supervised visits and with Trinity through telephone calls, which they enjoyed.

In an addendum report filed in October 2018, the agency reported the children were thriving in their placement and were bonded to their foster parents and they asked repeatedly if they could stay with them. Father visited regularly with them under supervision. He was appropriate and affectionate with them and they returned his affection. He expressed frustration when the children called him by his first name instead of “dad” and when they would not listen to him. The foster parents reported the children acted out for weeks after their visits with father. They had tantrums and nightmares and tried to control every situation. The agency reported that while the children continued the monthly visits, the visits seemed to serve only as a reminder of the trauma they had endured. They tended to have increased behavioral issues after visits and became insecure, asking their foster parents if they could stay with them. The agency believed the children should be allowed permanency in the form of adoption and be allowed to heal from their past traumas.

The foster parents submitted a letter to the juvenile court describing the behavioral issues the children had when they were placed in their home. They were aggressive and

hit and kicked each other. They also threw tantrums in which they screamed, spit, kicked walls and damaged furniture. Sometimes the tantrums lasted for an hour or more and occurred multiple times in a day, especially if they were not in control of every decision. They were hypervigilant and wary of everyone and needed to be told many, many times a day what would be happening, what they would be eating and where they were going. They needed to have a snack every half hour and needed to be reassured several times a day that there was enough food for them and they would always have dinner. At bedtime, they were both very afraid and needed a parent to sit with them until they were asleep. They woke up early, around 4:00 a.m., crying about nightmares and talking about the trauma they endured. With help from their counselor and support counselors and social workers who came to the house, their behaviors had subsided. The children were very attached to the foster parents. N.O. told them two to three times a day that she loved them and asked four to five times a week if she could stay at their house. Jacob told them at least 50 times a day he loved them and asked five times a day to stay at their house. The foster parents stated it broke their hearts that the children felt the need to beg for consistency and that they worried about being moved. Jacob asked if he could stay at their house until he was “ ‘big like a daddy.’ ” Then he would live in a house next door so he could invite them over for a barbeque. N.O. thought that was a good idea so she also planned to get a house next door.

In October 2018, the juvenile court convened a hearing to determine whether to conduct an evidentiary hearing on father's section 388 petition and to rule on the agency's recommendation to terminate parental rights. The court denied father an evidentiary hearing on his petition. The court found father's circumstances had not changed because he never acknowledged the physical and emotional abuse he inflicted on the children or indicated what steps he was going to take to make sure it never happened again. As far as the children's best interests, the court noted they had been out of his

custody for a year and a half and delaying permanency for them did not serve their best interests.

Father testified during the next phase of the hearing. He was working permanently in Reno and had an apartment there. The children were happy to see him when they visited and excited about the things he brought for them. During their early visits, N.O. asked him when she was going home. He could only tell her he had to work and could not give her an exact time. Jacob told him, “ ‘I miss you’ ” and put his head down. He described his relationship with N.O. as “awesome” and his relationship with Jacob was “good.” He said, “I love my little boy. He loves me. We like to play together. We haven’t had the opportunity to rebond. I just feel us growing apart since this happened. But I can just hold on to the good things, the memories and stuff. And I love him and I miss him, just like he misses me. I feel that we’re very tight. Our bond, it is not completely broke[n], but I feel a separation since reduction of the visits.” At the most recent visit, he told the children he loved them and they said the same to him.

As to what he would like to see happen, father said he would like the opportunity to prove he was a concerned and caring parent. He had been trying to work on his parenting skills and every other thing he could possibly work on to regain custody of his children. He was also trying to develop a plan of action to get his children back and never again make the mistake of putting his hand on his child or any other child.

Father’s attorney argued father had done everything possible to reunify with his children. He also argued the beneficial parent-child exception to adoption applied because father regularly visited the children and their loving behavior toward him indicated it would be detrimental to terminate his parental rights.

The juvenile court found the children were likely to be adopted and terminated father’s parental rights. As to the beneficial parent-child relationship exception, the court acknowledged father regularly visited the children and they recognized him as their father. However, the court could not find that any detriment resulting from termination

of his parental rights outweighed the benefit the children would derive from a permanent placement with their foster parents through adoption.

DISCUSSION

When dependency proceedings culminate in a hearing to select a permanent plan under section 366.26, the juvenile court has little choice but to terminate parental rights and select adoption as the child's permanent plan if it finds as it did here that the children are likely to be adopted and none of the exceptions to adoption apply. (§ 366.26, subd. (c)(1).) Here, father offered no evidence at the section 366.26 hearing to rebut the agency's evidence that the children were likely to be adopted. Nor did his attorney establish that the beneficial parent-child relationship exception or any other exception to adoption applied.

In his letter, father argues the juvenile court was mistaken in denying him reunification services and terminating his parental rights and that he has learned from his mistakes. As a preliminary matter, we cannot review the juvenile court's dispositional orders denying father reunification services. He appealed those orders and we affirmed them. They are now final and no longer subject to our review. As to the order terminating his parental rights, he fails to cite any evidence in the record indicating the children are not adoptable or that any of the exceptions to adoption apply. Consequently, father has not established good cause that an arguable issue exists on the record with respect to the court's decision to terminate his parental rights. Since father makes no mention of the court's summary denial of his section 388 petition, we need not address it.

We conclude the contentions father raised in his letter do not establish good cause there are arguable issues requiring supplemental briefing. Further, though we are not required to do so, we have reviewed the pertinent parts of the record and have found no arguable issues for briefing. (*Phoenix H.*, *supra*, 47 Cal.4th at pp. 841–842.) Accordingly, we dismiss the appeal.

DISPOSITION

This appeal is dismissed.